

1997 ANNUAL REPORT

INDIANA JUDICIAL NOMINATING COMMISSION INDIANA COMMISSION ON JUDICIAL QUALIFICATIONS

Meg Babcock, Counsel

The Indiana Commission on Judicial Qualifications and the Indiana Judicial Nominating Commission is a seven-member commission which performs two distinct functions within the judiciary. The Qualifications Commission investigates allegations of judicial misconduct and, when appropriate, prosecutes misconduct cases which ultimately are resolved by the Supreme Court. Additionally, the Commission has an educational role within the judiciary, and offers informal or written advisory opinions about judicial ethics. The Nominating Commission solicits and interviews applicants to fill vacancies on the Supreme Court, the Court of Appeals, and the Tax Court, and selects three candidates for each vacancy, whose names are sent to the Governor for the Governor's selection of one nominee to fill the vacancy. Also, the Nominating Commission certifies former judges as Senior Judges to help Indiana courts fulfill their duties.

The Commission met on seven occasions in 1997. As the Nominating Commission, it met twice for the purpose of interviewing candidates to succeed Court of Appeals Judge Jonathan J. Robertson from the First District, who retired on December 31, 1997. In November, 1997, the Commission interviewed the fifteen applicants for the vacancy, and in December, interviewed eight semi-finalists. The Commission then nominated Judge Lloyd Mark Bailey, Decatur Superior Court, Judge Stephen R. Heimann, Bartholomew Circuit Court, and Judge Walter H. Palmer, Gibson Circuit Court. At the end of the year, the Governor's appointment was pending. Also in December, Judge Linda L. Chezem, from the First District seat of the Fourth District of the Court of Appeals, announced her resignation, and the Nominating Commission began its solicitation of applicants to fill her vacancy. Finally, in 1997, the Nominating Commission certified eight new Senior Judges, and recertified forty-seven Senior Judges.

In 1997, the Qualifications Commission met on five occasions and considered two hundred thirteen complaints of ethical misconduct against Indiana judges and judicial candidates. One hundred seventy-three complaints, or eighty-one percent, were dismissed as not raising substantial issues of ethical misconduct or as outside the Commission's jurisdiction. Thirty-two complaints were investigated by the Commission, requiring the judges or candidates to respond in writing to the allegations against them. Fourteen of those cases were dismissed, and, in twelve instances, the judges or candidates received private cautions from the Commission. In two cases, the judges consented to public admonitions from the Commission in lieu of formal proceedings. *Admonition of Judge James E. Letsinger, Lake Superior Court, Criminal Division, June 12, 1997*; *Admonition of Judge David E. Eorard, Perry Circuit Court, December 31, 1997*. Three complaints were resolved after the Commission and the judge reached a settlement agreement calling for a thirty-day unpaid suspension from the bench, which the Court approved. *Matter of Cox*, 680 N.E.2d 528 (Ind. 1997). One complaint against a judicial candidate was resolved also by settlement agreement, and the Court imposed a Public Reprimand. *Matter of Haan*, 676 N.E.2d 740 (Ind. 1997).

The Qualifications Commission prosecuted two contested disciplinary hearings in 1997, one in *Matter of Bybee*, involving a judicial candidate, and the other in *Matter of Edwards*, Judge of the Delaware Superior Court #4. In *Bybee*, the Masters were Presiding Master Judge John A. Westhafer, Decatur Circuit Court, Judge Vincent Grogg, Fountain Circuit Court, and Judge Rosemary Higgins Burke, Fulton Circuit Court. After the hearing, the panel reported to the Court that it had concluded by a majority vote that Ms. Bybee violated the *Code of Judicial Conduct* and should receive a Private Reprimand. The case was pending before the Court at the end of the year on the Commission's recommendation of a Public Reprimand. In *Matter of Edwards*, a three-day trial took place in December, and the Masters' report was pending at the end of the year. That panel consisted of Presiding Master Judge Paul R. Cherry, DeKalb

Circuit Court, Judge James R. Heuer, Whitley Circuit Court, and Judge Sheila M. Moss, Lake Superior Court.

Throughout 1997, Commission counsel was available to judges and candidates to help them resolve their ethical dilemmas. One formal advisory opinion was published, and counsel responded to approximately two hundred requests for advice from judges and candidates. She participated in panel discussions about judicial ethics and represented the Commission at the 1997 meeting of the Association of Judicial Disciplinary Counsel in Denver, Colorado.

The Chief Justice of Indiana is the *ex officio* Chairman of the Commission. Other Commission members serving in 1997 were Theodore Lockyear, Judy Johns Jackson, Douglas Hill, Timothy Roberts, Daniel Roby, and Anne Faherty.